

HUSKY OIL CO.
PAN EASTERN EXPLORATION CO.

IBLA 80-604

Decided January 6, 1981

Appeal from a decision from the Utah State Office, Bureau of Land Management, canceling oil and gas lease U-41004.

Affirmed.

1. Oil and Gas Lease: Cancellation

The Secretary of the Interior has the authority to cancel any oil and gas lease issued contrary to law because of the inadvertence of his subordinates.

2. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Cancellation

Where an oil and gas lease has inadvertently been issued for land, which was the subject of a then current lease in good standing and the newly issued lease is properly canceled, there is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land in value equal thereto.

APPEARANCES: E. William Rideout, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Husky Oil Company and Pan Eastern Exploration Company appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated March 21, 1980, which canceled oil and gas lease U-41004. The oil and gas lease was originally issued to Henry A. Alker on September 20, 1978, as first qualified drawee in the July 1978 posting. On October 26, 1978, Alker assigned 100 percent interest in the oil and gas lease to Husky Oil Company for the sum of

\$9,600. Husky Oil Company then assigned a 40 percent interest in the lease to Pan Eastern Exploration Company. The assignment to appellants was approved effective January 1, 1979.

The BLM decision of March 21, 1980, noted that lease U-41004 described various lands in secs. 33, 34, and 35, in T. 3 N., R. 25 E., Salt Lake meridian, Utah, which were included in lease U-36555, a lease which was still extant. The State Office held that the posting of the lands and issuance of lease U-41004 was in error and canceled the lease.

Appellants timely pursued an appeal to this Board. In their statement of reasons, appellants do not question the grounds asserted for cancellation of the oil and gas lease, nor do they question BLM's authority to so act. They state that they do not intend to seek restitution from Henry A. Alker, their assignor, since they feel he made the assignment in good faith, and the error was not his. They look to the Government to fully rectify its error by restoring the parties to their original positions. As relief appellants request reimbursement from the Government in the amount of \$9,600 or in the alternative, issuance of an oil and gas lease on Federal lands in the State of Utah equal in value to the amount, \$9,600.

[1] It is clear that the Secretary of the Interior generally has the authority to cancel any lease issued contrary to law because of the inadvertence of his subordinates. Boesche v. Udall, 373 U.S. 472 (1963); Paul N. Temple, 33 IBLA 98 (1977). In this case, due to error on the part of BLM employees of the Utah State Office, lands currently embraced within a valid lease were offered in a simultaneous drawing. Such lands were not available for leasing. Therefore, the lease was void as to those lands. Paul N. Temple, supra.

BLM would have been able to cancel the lease, duly refunding all rentals tendered, had the original lessee retained it. It may do so now that appellants are the lessees. Appellants can be in no better position than their assignor. See Corbin on Contracts § 893 (1950).

In Paul N. Temple, supra, this Board disallowed a claim for reimbursement where an oil and gas lease was canceled in part. We stated:

The fact that appellant entered into an agreement * * * concerning those lands which had erroneously been included in [the subject lease] cannot serve as a basis for a claim that the Government should reimburse appellant for his alleged loss. Such lands were not available for leasing; therefore, the lease was void as to those lands. We find no authority nor has appellant cited any authority for granting the relief which he seeks.

33 IBLA at 100.

Where, as here, an oil and gas lease has inadvertently been issued for land which was the subject of a valid outstanding lease, the newly issued lease is properly canceled. There is no authority to refund to assignees the purchase price paid for the lease or to issue to them an oil and gas lease on Federal land equal in value thereto. While the error of BLM is regrettable, we are unable to provide either form of relief requested. It goes without saying, however, that BLM must refund all rentals tendered for lease U-41004. See Paul N. Temple, supra; Beard Oil Co., 1 IBLA 42, 77 I.D. 166 (1970).

Therefore, pursuant to the authority delegated to the Board of Land appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski

Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Anne Poindexter Lewis
Administrative Judge

